

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICKEY G. FLICK, JR.,

Plaintiff,

Case No. 05-CV-70837

vs.

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY,

HON. GEORGE CARAM STEEH
HON. STEVEN D. PEPE

Defendant.

ORDER ACCEPTING REPORT AND RECOMMENDATION;
GRANTING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT;
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; AND
REMANDING THIS MATTER FOR FURTHER PROCEEDINGS

This matter is before the court on the parties' cross-motions for summary judgment as to plaintiff Rickey Flick, Jr.'s claim for judicial review of defendant Commissioner of Social Security's denial of his November 10, 2003 application for disability insurance benefits. This matter was referred to Magistrate Judge Steven D. Pepe. On February 28, 2006, Magistrate Judge Pepe issued a 27-page Report and Recommendation recommending that plaintiff's motion for summary judgment be granted in part, that defendant's motion for summary judgment be denied, and that the matter be remanded to the ALJ for further proceedings. Specifically, Magistrate Judge Pepe recommends remanding to the ALJ on finding that the hypothetical question posed to the Vocational Expert ("VE"), and relied upon by the ALJ as substantial evidence for denying Flick's application for benefits, did not accurately portray Flick's demonstrated limitation of "no forceful or sustained gripping and grasping with *either* hand and no constant repetitive

movements with *either* hand." R&R, at 25 (emphasis in original). A VE's response to an ALJ's hypothetical question constitutes substantial evidence on which the ALJ may rely in denying a claim for benefits only if the question accurately describes the claimant's limitations. See Howard v. Comm'r of Soc. Sec., 276 F.3d 235, 239 (6th Cir. 2002). No party has filed timely objections to Magistrate Judge Pepe's Report and Recommendation. See 28 U.S.C. § 636(b)(1); E.D. Mich. L.R. 72.1(d)(2).

Having reviewed the record, and in the absence of timely objections, the court hereby ACCEPTS Magistrate Judge Pepe's well-reasoned February 28, 2006 Report and Recommendation as its own. Defendant's motion for summary judgment is hereby DENIED. Plaintiff's motion for summary judgment is hereby GRANTED IN PART to the extent this matter is hereby REMANDED to the ALJ for further proceedings consistent with the analysis set forth in Magistrate Judge Pepe's Report and Recommendation.

SO ORDERED.

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: March 23, 2006

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on March 23, 2006, by electronic and/or ordinary mail.

s/Josephine Chaffee
Secretary/Deputy Clerk